

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
	:	
of	:	
	:	
STANISLAWA KWIATKOWSKA	:	DETERMINATION
	:	DTA NO. 818069
for Redetermination of a Deficiency or for Refund of New	:	
York State and New York City Personal Income Tax under :	:	
Article 22 of the Tax Law and the Administrative Code for	:	
the City of New York for the Year 1994.	:	

Petitioner, Stanislaw Kwiatkowska, 20 Seaman Avenue, 4D, New York, New York 10034, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income tax under Article 22 of the Tax Law and the Administrative Code for the City of New York for the year 1994.

A small claims hearing was held before Arthur Bray, Presiding Officer, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York on February 8, 2002 at 11:00 A.M. Petitioner appeared by Michelle Kwiatkowska. The Division of Taxation appeared by Barbara G. Billet, Esq. (Jennifer L. Hink, Esq., of counsel).

Since neither party herein elected to reserve time to file a brief, the three-month period for the issuance of this determination began as of the date the hearing was held.

ISSUE

Whether the Division of Taxation's assertion of a deficiency for the year 1997 on the basis of Federal audit changes was proper, and whether financial hardship is a basis for canceling the tax asserted to be due.

FINDINGS OF FACT

1. The Division of Taxation (“Division”) is advised of Federal audit changes by the Internal Revenue Service (“IRS”) by a document known as a Revenue Agent’s Report of Income Tax Examination Changes (“Revenue Agent’s Report”). A notation of “CIF” on the document means that the taxpayer has agreed to the Federal audit changes and the taxpayer has signed the Revenue Agent’s Report. The notation of CIF is placed on the document when the Revenue Agent’s Report is received and processed by the Division. The Division will also place the letter B on the document following the CIF when the changes resulted in an adjustment to Federal tax of more than \$2,000.00.

2. A review of the Revenue Agent’s Report shows that, for the year 1994, the IRS disallowed the full amount of petitioner’s Schedule C expenses in the amount of \$10,500.00 and further disallowed \$7,735.00 of the \$13,335.00 claimed itemized deductions resulting in the use of the standard deduction. The foregoing led to total adjustments of \$18,235.00. The notation of CIF appears on the document showing that petitioner agreed to the adjustments and that her signature appears on the document. Further, the presence of the letter B shows that the changes resulted in an increase of Federal tax of more than \$2,000.00.

3. The Division of Taxation (“Division”) issued a Notice of Additional Tax Due, dated July 13, 1998, to petitioner, Stanislaw Kwiatkowska, which asserted a deficiency of New York State and New York City personal income tax, for 1994, in the amount of \$1,641.00 plus interest in the amount of \$479.23 for a balance due of \$2,120.23. The notice explained that the deficiency was based on her failure to report Federal audit changes to New York State. The notice further explained that petitioner’s business expenses and itemized deductions were changed to reflect the Federal adjustments. Since the itemized deductions were decreased to an

amount less than the minimum standard deduction, petitioner's New York deduction was adjusted to the allowable standard deduction. In addition, the household credit was disallowed because petitioner's adjusted gross income was more than \$32,000.00. Lastly, the Division noted that interest was due on the underpayment of tax from the due date of the return to the date the tax is paid in full.

CONCLUSIONS OF LAW

A. During the period in issue, Tax Law former § 659 provided, in pertinent part, as follows:

If the amount of a taxpayer's federal taxable income . . . reported on his federal income tax return for any taxable year . . . is changed or corrected by the United States internal revenue service or other competent authority . . . the taxpayer . . . shall report such change or correction . . . within ninety days after the final determination of such change, correction, . . . or as otherwise required by the commissioner, and shall concede the accuracy of such determination or state wherein it is erroneous.

B. Here, the notice states that petitioner was required to report any changes to her Federal taxable income within 90 days of the final IRS determination. In response, petitioner has not challenged the conclusion that there was a final Federal determination of a change in taxable income. In addition, petitioner did not contest the Division's assertion that the Federal determination was not reported to New York State as required by Tax Law former § 659. In view of petitioner's failure to comply with Tax Law former § 659, the Division's issuance of the Notice of Additional Tax Due for the year 1994 was correct (***Matter of Migliore***, Tax Appeals Tribunal, January 17, 1991).

C. At the hearing, petitioner, through her daughter, stated that she knows that she owes the money but does not have the financial resources to pay the amount due. Although I am sympathetic to the financial difficulty which this notice poses, the law is well settled that

economic difficulties do not justify canceling the tax due (*see, Matter of Zeitman*, Tax Appeals Tribunal, January 25, 1996; *Matter of Dworkin Constr. Co.*, Tax Appeals Tribunal, August 4, 1988). Therefore, I am constrained to deny the petition.

D. The petition of Stanislaw Kwiakowska is denied.

DATED: Troy, New York
April 25, 2002

/s/ Arthur Bray
PRESIDING OFFICER